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National Association of
Credit Men

A brief presented before
the Committee on the...

New York

[1914]

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A Brief Presented Before
the Committee on the Post
Office and Post Roads at
Washington, D. C., April
28, 1914, in Relation to
the False Statement Bill
of Congressman Sabbath.

H. R. 14,328

As Amended by H. R. 15,986



NATIONAL ASSOCIATION OF
CREDIT MEN

41 Park Row, New York, N. Y.

A Brief Presented Before the Committee on the Post Office and Post Roads at Washington, D. C., April 28th, 1914, in Relation to the False Statement Bill of Congressman Sabath.



NE of the great drains upon our national commerce, as it is represented by our prevailing medium of exchange, the credit system, with an attendant waste and cost that are eventually borne by the consumer, is the obtaining of money and merchandise credit by fraud which may be practiced either as a conspiracy and premeditated intention, or in an effort of an involved debtor dishonestly to retain merchandise and moneys which are due his creditors.

We are interested as an Association in defending the credit system against fraudulent abuses and maintaining that relationship between debtor and creditor which promotes mutually their welfare and reduces the cost to consumers of commodities needed for their comfort and happiness.

The wide geographical boundaries of our nation have developed long distance credit granting wherein buyer and seller rarely meet one another, and all transactions are carried on through the intermediary of representatives or by correspondence. This system of long distance credit granting, out of which have grown some of our most serious problems in inter-state commerce, has developed abuses on the part of the fraudulently inclined who undertake to secure credit by furnishing false property statements to banks and merchandise-distributing houses. The cus-

tom of asking for property statements signed by the individual, firm or corporation soliciting credit as a means of ascertaining the right of the solicitor of credit to the confidence asked for has become general, and any practice which unfavorably affects this system is a direct hurt to commerce and to the credit system.

The rules of procedure required to establish false pretenses and larceny under the common law practice usually defeat justice and save a fraudulent buyer from proper punishment. In order to correct this situation and eliminate the commercially fraudulent, the National Association of Credit Men, in conjunction with the American Bankers' Association, in 1909 prepared a model false statement law which simplifies the prosecution of one who has knowingly made a false statement with the purpose that it be relied upon.

Under this statute it is not necessary to prove intent; that the statement was knowingly false and uttered for the purpose of being relied upon conclusively proves that intent; and this statute has been enacted in the model, or substantially the model, form in about seventeen states. We hope eventually to have it uniform in all the states, for already its good effect upon commerce and the credit system, through its protection to creditor and debtor alike, is discernible.

Now, the false statement statute as secured up to the present is more serviceable as a protection in intra-state than in inter-state commerce, and that we might strike at the heart of the situation and have the National Government put its seal upon honest commer-

cial transactions and assist in eliminating the parasite and one of the avoidable taxes on living, we are asking the passage of a House bill introduced by Hon. A. J. Sabath of Illinois, known as H. R. 14,328, and entitled "To Prohibit the Transmission Through the Mails of False Statements in Writing for the Procuring of Credit Thereon."

We sincerely feel that this national measure, reaching, as it does, interstate commercial transactions, is vitally necessary. It has had nation-wide endorsement.

As a part of this brief we are presenting a leaflet prepared and issued by the National Association of Credit Men, in which are presented certain difficulties attending the operation of such statutes. It will be found convincing as to the needs of national regulation. It has been thought that the existing statutes embrace the transmission of false statements through the mails; and while some decisions would appear to support that contention, others, we believe, have denied the contention, and it would appear as though the intent to defraud would have to be proved, which would, as in the case of the common law practice, defeat justice in many instances.

The prevention of the use of the mails in the promotion of fraud is limited substantially to two statutes—that of Section 5480, Criminal Code of the U. S., and the section superseding it in the enactment of 1909, Section 215 of the Code as it now exists. While the latter section considerably broadens the former, yet such broadening strength as has been brought about

by the recent revision of the Code has not obviated the necessity for the enactment of the H. R. 14,328. Further, it may not be impossible at this point to show wherein Section 215 differentiates from Section 5480 of the old Code. This can be done by quoting the syllabus in the recent case of *Young v. U. S.* 232, U. S. 161, as follows:

"Under 5480, R. S., it was necessary to charge not only that a scheme to defraud was disclosed, but that it was intended to be effected by opening or intending to open correspondence with some other person by means of the postoffice; under 215 of the Criminal Code it is only necessary that the scheme is devised or intended to be devised and a letter placed in the postoffice for the purpose of executing the scheme or attempting to do so."

It will thus be seen that cases arising both under the new and old sections are applicable to the question of whether or not sufficient authority now exists at law to obtain punishment for the transmission of false financial statements through the mails, and this being so all that remains to be done is to examine two or three Federal decisions.

U. S. v. Wootten, 29 Fed. Rep. 702, is directly in point in that it may not be possible, and indeed very seldom is possible, to prove that the one mailing the statement does not intend to pay for the goods when they arrive. In that case Judge Simonton charged the jury on this point as follows:

"The intent not to pay for the goods must exist before credit sought, must precede the order for

the goods. This is the law of the case and you must apply it."

Following this Federal decision is the indictment in the case of *Ex Parte King*, 200 Fed. Rep. 622, in which the following words are actually used in the indictment:

"Without the expectation or intention of paying for the same according to the terms and tenor of said contracts of purchase."

In *Faulkner v. U. S.*, 157 Fed. Rep. 840, the complaint alleged a scheme to defraud by means of a circular in which the words "immediate reports, accurate accounts" were used by a commission man in soliciting business from shippers. It was testified that the defendant had settled with a majority of his creditors but in some instances had not done so and in this case the Court used the following language:

"The fact that one who advertises a business fails to make settlement with some of his creditors, the advertisements being substantially true, does not sufficiently tend to show a scheme or artifice to defraud and to make a question to be submitted to the jury."

The most important of the recent decisions of the U. S. Circuit Court of Appeal bearing on the Sabbath bill is that of *Marshall v. U. S.*, 197 Fed. Rep. 515, which arose out of the United Wireless transactions. In this the Court said:

"Such is the case of * * * making false representations with the intent to obtain property thereby. When the Government has proved that the defendant has made false

representations the case is not fully made out * * * ; every one of these things might be done innocently in one instance, but hardly in many instances."

It will thus be seen that unless the Government could prove by competent evidence more than one such false and misleading statement it would not be possible to convict the defendant and in this way a loophole is left for a successful defence in that only one such false statement might be proved and the defendant thereby enabled to claim that it was innocently made, notwithstanding the fact that such statement enabled him to obtain many thousands of dollars' worth of goods fraudulently.

The principles as enunciated in the Marshall case, following *Wilson v. U. S.*, 190 Fed. Rep. 433, are affirmed in the recent case of *Scheinberg v. U. S.*, not yet reported.

Other cases might be cited to the same effect but those quoted are sufficient to show that the laws as they now exist provide a wide loophole through which those who intend to defraud by means of false statements can do so.

Coming to you as representing the banking and commercial interests of the nation and submitting this brief in behalf of the Sabbath bill, it is our hope that you will take prompt and favorable action upon it and give us the proposed statute for it will materially assist in preventing that which is now an avoidable burden upon commerce and in eliminating one of the elements which make for high living costs.

**END OF
TITLE**